

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WESTERN NATIONAL ASSURANCE  
COMPANY and PIONEER SPECIALTY  
INSURANCE COMPANY,

Plaintiffs,

vs.

BURNS TOWING, INC., a Washington  
corporation; and KRISTINE A. ZACHARY,  
an individual,

Defendants.

NO.

COMPLAINT FOR DECLARATORY  
JUDGMENT

Plaintiffs Western National Assurance Company and Pioneer Specialty Insurance Company (collectively “Western National”) bring this Complaint for Declaratory Judgment against the Defendants, Burns Towing, Inc. and Kristine A. Zachary (collectively the “Burns Towing Defendants”).

**I. NATURE OF THE ACTION**

1. This is an insurance coverage action seeking declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202. Western National seeks a determination that it has no duty to defend or indemnify the Burns Towing Defendants under policies of insurance issued to Burns Towing Inc. by Western National with respect to the underlying lawsuit filed against the Burns Towing Defendants in the Pierce County Superior Court for the State of Washington (PCSC

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Mines  
One Convention Place  
Suite 1400  
701 Pike Street  
Seattle, Washington 98101-3927  
(206) 292-9988

Cause No. 18-2-11257-1) (“Lawsuit”). The Lawsuit, filed by the State of Washington (“State”), seeks injunctive relief and civil penalties for alleged violations of the Service Members’ Civil Relief Act, RCW 38.42, and the Consumer Protection Act, RCW 19.86. A copy of the complaint filed in the Lawsuit is attached as Exhibit A.

## II. THE PARTIES

2. Plaintiff Western National Assurance Company is an insurance company incorporated under the laws of and having its principal place of business in the state of Minnesota. It is part of the Western National Insurance Group and is authorized to do business in the state of Washington and elsewhere.

3. Plaintiff Pioneer Specialty Insurance Company is an insurance company incorporated under the laws of and having its principal place of business in the state of Minnesota. It is part of the Western National Insurance Group and is authorized to do business in the state of Washington and elsewhere.

4. Defendant Burns Towing, Inc. is a towing company. It is a Washington corporation with a principal place of business located at 6454 East McKinley Avenue, Tacoma, Washington 98404, and other additional locations in Pierce County.

5. Defendant Kristine A. Zachary is president and owner of Burns Towing, Inc. She is believed to be a resident of Pierce County, Washington.

## III. JURISDICTION AND VENUE

6. This court has subject matter jurisdiction under 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

7. An actual and justiciable controversy between Western National and the Burns Towing Defendants exists within the meaning of 28 U.S.C. § 2201 regarding whether Western National has a duty to defend or indemnify the Burns Towing Defendants under the Western

1 National policies with respect to the claims asserted in the Lawsuit, as more particularly  
2 described below.

3 8. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because  
4 the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs,  
5 and the suit is between citizens of different states.

6 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that a substantial  
7 part of the events or omissions giving rise to this claim occurred in this judicial district and the  
8 defendants reside in this judicial district.

#### 9 **IV. FACTS**

##### 10 **A. The Western National Policies.**

11 10. Plaintiff Western National Assurance Company issued a commercial package  
12 insurance program to Burns Towing, Inc. with a policy period of May 1, 2017 to May 1, 2018.  
13 The package contained several insurance policies including a Business Auto policy (Policy No.  
14 CPP 1138141-01), a Commercial Property policy (Policy No. 1139997-01), and an Inland  
15 Marine policy (CPP 1139999-01).

16 11. Plaintiff Pioneer Specialty Insurance Company issued a commercial package  
17 insurance program to Burns Towing, Inc. with a policy period of May 1, 2018 to May 1, 2019. It  
18 also included a Business Auto policy (Policy No. CPP 1138141-02), a Commercial Property  
19 policy (Policy No. 1139997-02), and an Inland Marine policy (CPP 1139999-02).

20 12. The insurance policies identified in paragraphs 8 and 9 above are hereafter  
21 collectively referred to as the "Policies".

##### 22 **B. The Underlying Lawsuit.**

23 13. On September 11, 2018, the State filed the Lawsuit.

24 14. The Lawsuit alleges that the Burns Towing Defendants have violated and  
25 continue to violate the Washington Service Members' Civil Relief Act, chapter 38.42 RCW

(“SMCRA”) and the Washington Consumer Protection Act, chapter 19.86 RCW (“CPA”) by selling the vehicles of active duty servicemembers at auction without first obtaining a court order.

15. The only specific violation described in the Lawsuit is alleged to have occurred in April 2018.

16. Based upon the foregoing allegations, the State seeks declaratory relief, a permanent injunction, civil penalties under the Consumer Protection Act, civil penalties under the SMCRA, restitution to servicemembers affected by the alleged statutory violations, and costs and attorney fees.

**C. The Burns Towing Defendants’ Insurance Claim**

17. The Burns Towing Defendants tendered the Lawsuit to Western National for defense and indemnity coverage.

18. Western National contends that it does not have a duty to defend or indemnify the Burns Towing Defendants in the Lawsuit for several reasons, including but not limited to the following:

- The Lawsuit does not allege facts constituting an “occurrence,” “accident,” or “accidental loss”;
- The Lawsuit does not seek “damages”;
- The Lawsuit’s request for civil penalties is excluded;
- The injuries alleged in the Lawsuit were expected or intended from the perspective of the Burns Towing Defendants;
- The vehicles in question were in the Burns Towing Defendants’ care, custody or control;
- The losses alleged did not occur while the Burns Towing Defendants were “attending, servicing, repairing, parking or storing” the vehicles in question;

- The vehicles in question were not “covered autos” for purposes of Western National’s Business Auto policies or covered property for purposes of the Inland Marine policies;
- The Lawsuit alleges facts constituting a conversion or an “illegal act”;
- The Lawsuit does not allege liability arising from a bill of lading, contract of carriage, or shipping receipt;
- The Lawsuit seeks fines or penalties resulting from violations of laws relating to a delay in payment, denial, or settlement of a claim;
- The Lawsuit does not allege “direct physical loss” to any property; and
- The Lawsuit does not allege damage to property while in transit.

#### **V. CLAIM FOR DECLARATORY JUDGMENT**

19. Western National incorporates the allegations set forth in the preceding paragraphs as if fully set forth herein.

20. An actual and justiciable controversy exists over the rights of the parties under the policies with respect to coverage for the claims asserted by the State in the Lawsuit.

21. Pursuant to the Uniform Declaratory Judgments Act, RCW Ch. 7.24.010 et seq., Western National is entitled to a declaratory judgment against the Burns Towing Defendants that it does not have a duty to defend or indemnify them against the Lawsuit under any of the Policies.

#### **VI. REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs request the following relief:

1. For a determination of the rights of the parties under the Policies by way of a declaration that Western National has no duty to defend or indemnify Burns Towing, Inc. or Kristine A. Zachary in connection with the claims asserted in the Lawsuit;
2. For an award of Western National’s recoverable costs and attorney fees; and

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3. For such other and further relief as this Court may deem just and proper.

DATED this 1<sup>st</sup> day of November, 2018.

BETTS, PATTERSON & MINES, P.S.

By /s/ Kathryn N. Boling

By /s/ Michelle E. Kierce

Kathryn N. Boling, WSBA #39776

Michelle E. Kierce, WSBA #48051

Betts, Patterson & Mines, P.S.

One Convention Place, Suite 1400

701 Pike Street

Seattle WA 98101-3927

Telephone: (206) 292-9988

Facsimile: (206) 343-7053

E-mail: kboling@bpmlaw.com

E-mail: mkierce@bpmlaw.com

Attorneys for Plaintiffs Western National Assurance

Company and Pioneer Specialty Insurance

Company

**CERTIFICATE OF SERVICE**

I, Kathryn N. Boling, hereby certify that on November 1, 2018, I electronically filed the following:

- **Complaint for Declaratory Judgment; and**
- **Certificate of Service.**

with the Court using the CM/ECF system.

DATED this 1st day of November 2018.

BETTS, PATTERSON & MINES P.S.

By /s/ Kathryn N. Boling  
Kathryn N. Boling, WSBA #39776  
Betts, Patterson & Mines, P.S.  
One Convention Place, Suite 1400  
701 Pike Street  
Seattle WA 98101-3927  
Telephone: (206) 292-9988  
Facsimile: (206) 343-7053  
E-mail: kboling@bpmlaw.com

Attorneys for Plaintiffs Western National  
Insurance Group and Pioneer Specialty  
Insurance Company

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